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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. **79-1374**

REPUBLICAN NATIONAL COMMITTEE, THE RIPON SOCIETY OF NEW
YORK, INC., PAUL C. CARDAMONE, and JOHN A. SCHMID,

Petitioners,

v.

FEDERAL ELECTION COMMISSION, ROBERT O. TIERNAN, MAX L.
FRIEDERSDORF, JOAN D. AIKENS, THOMAS E. HARRIS, JOHN
W. MCGARRY, FRANK P. REICHE, EDMUND L. HENSHAW, JR.,
J. STANLEY KIMMITT, BENJAMIN R. CIVILETTI, and G. WILLIAM
MILLER,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI BEFORE
JUDGMENT TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT**

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MARCH 7, 1980

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The Republican National Committee, The Ripon Society of New York, Inc., Paul C. Cardamone, and John A. Schmid respectfully petition that a writ of certiorari before judgment issue, pursuant to 28 U.S.C. §1254(1), to review the final judgment of the United States District Court for the Southern District of New York, presently on appeal to the United States Court of Appeals for the Second Circuit, which was entered on February 19, 1980 by the Hon. Lee P. Gagliardi, U.S.D.J., sitting as a Single-Judge District Court pursuant to 28 U.S.C. §1331. This judgment (which is printed at Appendix A) upheld the constitutionality of certain provisions of the Presidential Election Campaign

Fund Act, 26 U.S.C. §9001 *et seq.* (hereinafter the "Fund Act").

The judgment of the Single-Judge District Court is one of three decisions involving identical issues and parties which upheld certain provisions of the Fund Act as well as the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendment of 1974, 1976 and 1979, 2 U.S.C. §431 *et seq.* Those provisions compel presidential candidates to comply with limits upon campaign expenditures in order to receive general election campaign funding and forbid individual citizens from engaging in a wide variety of political activities requiring personal expenditures in connection with presidential campaigns. The other decisions were by a Three-Judge District Court for the Southern District of New York and by the Court of Appeals for the Second Circuit, *en banc*. A separate Jurisdictional Statement under 26 U.S.C. §9011(b) has been filed this date so as to appeal from the judgment of the Three-Judge Court (hereinafter the "Section 9011(b) Jurisdictional Statement"). A separate Jurisdictional Statement has also been filed this date so as to appeal from the judgment of the Court of Appeals, *en banc*.*

In order to avoid undue repetition in this petition, portions of the Section 9011(b) Jurisdictional Statement will be incorporated by reference in their entirety into this petition.

Opinions Below

The opinions below consist of Joint Findings of Fact (issued jointly by the Single-Judge District Court and the

*The jurisdictional provisions which have caused several judgments to be entered are discussed in the portion of the Section 9011(b) Jurisdictional Statement entitled "Description of Proceedings."

Three-Judge Court) and an Opinion of the Three-Judge Court (which the Single-Judge District Court concurred in and adopted). The single Judge, Hon. Lee P. Gagliardi, U.S.D.J., sat as a member of the Three-Judge Court and issued no separate opinion. The Joint Findings of Fact and the opinion of the Three-Judge Court which have not yet been reported, are printed, respectively, as Appendix B and Appendix C to the Section 9011(b) Jurisdictional Statement.

Jurisdiction

The final judgment of the Single-Judge District Court was entered on February 19, 1980. This suit is brought under 28 U.S.C. §1331. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1254(1). This petition for certiorari before judgment is being filed within 90 days from the entry of the judgment of the Single-Judge District Court.

Questions Presented

(1) Do the campaign expenditure limitations imposed by the FECA on presidential candidates who accept public campaign funding under the Fund Act violate these candidates' rights under the First, Fifth and Ninth Amendments to the Constitution?

(2) Do the prohibitions imposed by the FECA on personal expenditures or contributions by individual citizens in support of publicly-funded campaigns violate these individuals' rights under the First, Fifth and Ninth Amendments to the Constitution?

Statement of the Case

Statutory Framework. The statutes involved are fully discussed in the Section 9011(b) Jurisdictional Statement, which is hereby incorporated by reference in its entirety.

Description of Proceedings. A procedural history of this case is set forth in detail in the Section 9011(b) Jurisdictional Statement, which is hereby incorporated by reference in its entirety.

Ruling Below and Appeal. The decision of the Three-Judge Court is summarized in the Section 9011(b) Jurisdictional Statement, which is hereby incorporated by reference in its entirety. The decision of the Three-Judge Court was filed on February 5, 1980, and judgment was entered thereon on February 13, 1980. The Single-Judge District Court entered its judgment on February 19, 1980, concurring in and adopting the decision of the Three-Judge Court.

Petitioners filed a notice of appeal from the judgment of the Single-Judge District Court to take the appeal to the United States Court of Appeals for the Second Circuit. The notice of appeal is printed at Appendix B.

Reasons for Granting the Writ

The Single-Judge District Court and the Three-Judge Court entered identical judgments in the same case upholding the constitutionality of certain provisions of the Fund Act. A direct appeal from the judgment of the Three-Judge Court to the Supreme Court is mandated by statute, 26 U.S.C. §9011(b), and has already been taken. Both judgments should be reviewed together. It will serve no purpose to have the judgment of the Single-Judge District Court reviewed separately by the United States Court of Appeals

for the Second Circuit, which presently has before it the appeal from said judgment, since said Court of Appeals, *en banc*, sitting pursuant to 2 U.S.C. §437h, upheld the constitutionality of the interrelated provisions of the FECA "substantially the reasons set forth in the opinion of the Three-Judge court***." Appendix E to the Section 9011(b) Jurisdictional Statement. That decision is presently on appeal before this Court. Further, in case of any uncertainty concerning the jurisdiction of the Three-Judge Court under the restrictive "implement to construe" language of 26 U.S.C. §9011(b) to decide questions of the constitutionality of the Fund Act, granting this writ will insure that all questions raised by this action will be properly before this Court for ultimate resolution on the merits.

In addition, the portion of the Section 9011(b) Jurisdictional Statement entitled "The Questions Are Substantial", is hereby incorporated by reference, in its entirety.

CONCLUSION

Based upon the foregoing, this petition for a writ of certiorari before judgment should be granted. Alternatively, action on the petition should be deferred pending disposition of the appeal from the decision of the Three-Judge Court.

Respectfully submitted,

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Of Counsel

Dated: March 7, 1980

APPENDIX A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

78 Civ. 2783 (LPG)

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Plaintiffs,

—against—

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

JUDGMENT OF THE SINGLE-JUDGE COURT

A three-judge District Court having been convened herein by order entered pursuant to 28 U.S.C. § 2284 on November 30, 1978, in accordance with § 801(b) of the Presidential Election Campaign Fund Act, 26 U.S.C. § 9011(b); and defendants having thereafter on February 20, 1979 renewed their motion to dismiss this action; and the three-judge District Court, together with the single-judge District Court, on October 15, 1979, after hearing the parties and accepting submissions of evidence, having filed Joint Findings of Fact; and the parties thereafter having submitted briefs on the renewed dismissal motion; and the three-judge District Court having issued an opinion, dated February 5, 1980, concluding that the complaint must be dismissed insofar as it seeks to state any claim based on the alleged unconstitutionality of the Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001 *et seq.*; and

Appendix A

the single-judge District Court having participated in the deliberations and joined in said opinion of the three-judge District Court; it is hereby

ORDERED, ADJUDGED AND DECREED that defendants' said renewed motion to dismiss this action is granted and the complaint herein is dismissed insofar as it seeks to state any claim based on the alleged unconstitutionality of the Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001 *et seq.*

Dated: New York, New York
February 14, 1980

/s/ LEE P. GAGLIARDI
Lee P. Gagliardi, U.S.D.J.

JUDGMENT ENTERED 2/19/80

/s/ RAYMOND F. BURGHARDT
Clerk

APPENDIX B**UNITED STATES DISTRICT COURT**

SOUTHERN DISTRICT OF NEW YORK

78 Civ. 2783 (LPG)

REPUBLICAN NATIONAL COMMITTEE, THE RIPON SOCIETY OF
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—against—

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W. MCGARRY, FRANK P. REICHE, EDMUND L. HENSHAW,
JR., J. STANLEY KIMMITT, BENJAMIN R. CIVILETTI, and
G. WILLIAM MILLER,

Defendants.

NOTICE OF APPEAL TO THE COURT OF APPEALS

Notice is hereby given that Republican National Committee, The Ripon Society of New York, Inc., Paul C. Cardamone and John A. Schmid, the plaintiffs above-named, hereby appeal to the United States Court of Appeals for the Second Circuit from the final order and judgment

Appendix B

of the single-judge district court dismissing the complaint entered in this action on February 19, 1980.

Dated: February 19, 1980

LORD, DAY & LORD

By: /s/ JOHN W. CASTLES 3d

John W. Castles 3d

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